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4 ROBERT HEGARTY,
5 Plaintiff,
6 v.
7 TRANSAMERICA LIFE INSURANCE
8 COMPANY,
9 Defendant.

10 Case No. 19-cv-06006-MMC
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13 **ORDER DENYING PLAINTIFF'S
14 MOTION FOR LEAVE TO FILE A
15 MOTION FOR RECONSIDERATION
16 AND/OR CLARIFICATION**

17 Re: Doc. No. 79
18

19 Before the Court is plaintiff Robert Hegarty's ("Hegarty") Motion for Leave to File a
20 Motion for Reconsideration and/or Clarification of Order ("Motion for Leave"), filed
21 October 14, 2020, pursuant to Civil Local Rule 7-9. By said motion, Hegarty seeks
22 reconsideration and/or clarification of the Court's Order Denying Plaintiff's Motion for
23 Preliminary Injunction ("Order"). (See Order, filed July 15, 2020.) Having read and
24 considered the Motion for Leave, the Court rules as follows.¹

25 **BACKGROUND**

26 Hegarty's Motion for Preliminary Injunction was based on his claims that defendant
27 Transamerica Life Insurance Company's ("Transamerica") "failure to pay his guaranteed
28 30-year bonus constituted breach of contract and elder financial abuse." (See Mot. for
Preliminary Injunction at 4:15-16 (emphasis omitted).) The Court, in denying that motion,
found the first requirement for a preliminary injunction, likelihood of success on the
merits, had not been met. In particular, the Court found the claims on which a preliminary

¹ Where a motion is made pursuant to Civil Local Rule 7-9, "no response need be filed" unless the court "decides to order the filing of additional papers." See Civil L.R. 7-9(d).

1 injunction was sought had been released under the terms of a nationwide class action
2 settlement in Oakes v. Bankers United Life Assurance Company, et al., Case No. 96-
3 06849 (192nd Dist. Ct. Dallas Cty.) ("Oakes").

4 DISCUSSION

5 A. Reconsideration

6 Under the Civil Local Rules of this district, a party seeking reconsideration of an
7 interlocutory order must file a motion for leave to file a motion for reconsideration, see
8 Civil L.R. 7-9(a), and must demonstrate therein one of the following:

- 9 (1) That at the time of the motion for leave, a material difference in fact or
10 law exists from that which was presented to the Court before entry of the
11 interlocutory order for which reconsideration is sought. The party also
12 must show that in the exercise of reasonable diligence the party
13 applying for reconsideration did not know such fact or law at the time of
14 the interlocutory order; or
15 (2) The emergence of new material facts or a change of law occurring after
16 the time of such order; or
17 (3) A manifest failure by the Court to consider material facts or dispositive
18 legal arguments which were presented to the Court before such
19 interlocutory order.

20 See Civil L.R. 7-9(b).

21 Here, Hegarty relies on the first and third such grounds.

22 1. Material Difference in Fact or Law

23 At the outset, relying on the first ground, Hegarty asserts the Court, in its Order,
24 "d[id] not address a 'material fact' unknown at the time the Order was filed -- that
25 Hegarty's DRL 1 Insurance Contract is not one of the specified versions of DRL 'policy
26 forms' included in the settlement." (See Mot. for Leave at 3:16-18.)² In that regard,
27 Hegarty notes, counsel for Transamerica stated at the hearing that the policies covered
28 by the Oakes settlement had certain "policy form numbers," which numbers, Hegarty now

26 ² In connection with this argument as well as others, Hegarty states, either
27 expressly or impliedly, that the Court ruled "[w]ithout discussion or explanation." (See,
e.g., Mot. for Leave at 3:14-15.) The Order, however, was intended as a "summar[y]" of
the Court's rulings, the bases for which were set out "in detail on the record at the
hearing." (See Order at 2:21-22.)

1 asserts, do not appear on his policy. At the hearing, however, counsel for Transamerica
2 also stated, “if we were to pull up . . . plaintiff’s certificate, we would see one of those
3 form numbers on the . . . certificate[]” (see July 10, 2020, Hr’g Tr. at 39:11-13), and
4 Hegarty, having been given an opportunity by the Court to contest that assertion, did not
5 do so (see id. at 9:24-25, 10:11-13 (noting “your client, as I understand it, was a member
6 of the Oakes class”; informing counsel, “[i]f I’m incorrect in what the parties are actually
7 saying . . . , then somebody should clarify it or correct me”). Moreover, as set forth
8 above, a party relying on a material difference in fact or law “must show that in the
9 exercise of reasonable diligence the party . . . did not know such fact or law at the time of
10 the interlocutory order.” See Civil L.R. 7-9(b)(1). If Hegarty’s certificate does not bear a
11 “form number” covered by the Oakes settlement, such fact was readily discernible prior to
12 the hearing.

13 Accordingly, to the extent the Motion for Leave is based on a material difference in
14 fact or law, it will be denied.

15 **2. Manifest Failure to Consider Material Facts or Dispositive Legal Arguments**

16 In support of the third ground, Hegarty first cites to language in the Oakes
17 settlement providing that “[n]either this Agreement nor any of the relief to be offered
18 under the Stipulation of Settlement . . . shall be interpreted to alter in any way the
19 contractual terms of any Policy” (see Mot. for Leave at 5:9-12), and then argues the
20 Court, in finding he “fail[ed] to identify anywhere in his contract documents any
21 ‘contractual term,’ let alone any ‘express term,’ providing him with a guaranteed bonus”
22 (see id. at 5:13-17 (quoting Order at 4:7-11)), manifestly “failed to address
23 Transamerica’s prior admission that Hegarty’s Insurance Contract contained a
24 guaranteed Persistence Bonus” (see Mot. for Leave at 5:18-19).

25 In quoting the Oakes settlement, however, Hegarty omits the last part of the
26 provision on which he relies, which is found in a section of the Stipulation of Settlement
27 titled “General Matters and Reservations” (see Hegarty Decl. Ex. J § M.21), and, when
28 read in full, is not directed at the scope of the release but, rather, at potential contentions,

1 such as that made by Hegarty at the hearing, that the settlement created a new contract.
2 (See id. (providing: “Neither this Agreement nor any of the relief to be offered under the
3 Stipulation of Settlement shall be interpreted to alter in any way the contractual terms of
4 any Policy or to constitute a novation of any Policy.”)); (see also July 10, 2020, Hrg Tr. at
5 61:13-14 (arguing, “if the claim is barred, that’s the same thing as a novation”)).) The
6 language relevant to the argument Hegarty makes in the instant motion appears in the
7 section titled “Release,” which provides as follows: “Nothing in this Release shall be
8 deemed to alter a Class Member’s rights . . . to make a claim for benefits that will become
9 payable in the future pursuant to the express written terms of the policy form issued by
10 the Defendants.” (See Hegarty Decl. Ex. J § H.1.b.2.) Equally important, that section
11 goes on to make clear that “[u]nder no circumstances shall this Section . . . entitle a Class
12 Member to assert claims that relate to the allegations contained in the Action or to the
13 matters described in Section H.1” (see id.), which matters expressly include “matters
14 relating to . . . persistency, or other policy bonuses” (see id. § H.1.b.1)).

15 In any event, Hegarty does not contend, nor did he contend at the hearing, that
16 Transamerica, either in the above-referenced letter or otherwise, ever identified any
17 contractual term in his policy providing for a guaranteed monetary bonus, nor has
18 Hegarty, at any time, identified any such provision. In short, there was no “manifest
19 failure by the Court to consider material facts or dispositive legal arguments.” See Civil
20 L.R. 7-9(3).

21 Accordingly, to the extent the Motion for Leave is based on a manifest failure to
22 consider material facts or dispositive legal arguments, it will be denied.

23 **B. Clarification**

24 With respect to Hegarty’s request, in the alternative, for clarification of the Order,
25 specifically, clarification as to the effect of that ruling on the status of his claims as well as
26 potential discovery, the Motion for Leave will be denied and the Court will set a Case
27 Management Conference at which the parties should be prepared to discuss their
28 respective positions as to those matters.

CONCLUSION

For the reasons stated above:

1. To the extent Hegarty seeks an order granting leave to file a motion for reconsideration of the Order Denying Plaintiff's Motion for Preliminary Injunction, the Motion for Leave is hereby DENIED.
 2. To the extent Hegarty seeks, in the alternative, an order granting leave to file a motion for clarification of the above-referenced Order, the Motion for Leave is hereby DENIED and the Court hereby SETS a Case Management Conference for November 20, 2020, at 10:30 a.m. A Joint Case Management Statement shall be filed no later than November 13, 2020.

IT IS SO ORDERED.

Dated: October 21, 2020

Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge